

Remarks

The June 17, 2004 Official Action has been carefully considered. In view of the amendments submitted herewith and these remarks, favorable reconsideration and allowance of this application are respectively requested.

At the outset, it is noted that a shortened statutory response period of three months was set in the June 17, 2004 Official Action. The initial due date for response, therefore, was September 17, 2004. A petition for a two (2) month extension of the response period is presented with this amendment and request for reconsideration, which is being filed before the expiration of the two (2) month extension period.

In the June 17, 2004 Official Action, claims 5, 9-13 and 15-26 are indicated as being allowed.

The remaining claims, i.e. claims 6-8 and 14, stand rejected as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Specifically, claim 8 is considered indefinite in view of the recitations "2-propene-1-sulfonic acid", "4-styrene sulfonic acid", "vinylsulfonic acid" and "vinyl phosphate acid". Claim 14 is considered vague in view of the recitation of "lipids". Claim 6 is considered vague in view of the recitation of "polyamino acids". According to the examiner, some amino acids are charged, arguably contradicting the earlier reference in claim 5 to "the nonionic segment of said block copolymer". Claim 7 is also considered vague in view of the recitation of

"polyamino acid". According to the examiner, not all amino acids are anionic, arguably contradicting the earlier reference in claim 7 to "said polyanionic segment".

The foregoing rejections constitute all of the grounds set forth in the June 17, 2004 Official Action for refusing the present application.

It is a well established principle of U.S. patent law that claim terms are to be given their broadest reasonable interpretation consistent with the specification. In re Finsterwalder, 168 U.S.P.Q. 530 (CCPA 1971).

In the present case, the 35 U.S.C. §112, second paragraph, rejections of claims 5, 7 and 15 are plainly improper because the interpretations ascribed by the examiner to the claim terms in question are clearly unreasonable.

Claim 5 further defines the non-ionic segment of the block copolymer referred to in claim 4, in conventional "Markush" language, i.e. "the nonionic segment of said block copolymer is selected from the group consisting of . . . .". That being the case, the polyamino acids included in the "Markush" group must be nonionic in nature. Any other interpretation would be contrary to the description of the components of the claim composition of matter provided in the paragraph bridging pages 9-10 of the specification. Similar reasoning compels the conclusion that the polyamino acid recited in claim 7 cannot reasonably be interpreted as being other than a polyanionic polyamino acid in view of the

"Markush" language in claim 7. Likewise, the recitation of "lipids" in claim 15 cannot reasonably be interpreted as being other than an anionic lipid in view of the "Markush" language in claim 15.

Such half-baked rejections under 35 U.S.C. §112, second paragraph are plainly unwarranted, particularly at this late stage of prosecution, and also considering the prior issuance of a Notice of Allowance for this application, indicating that all of the pending claims, including claims 6, 7 and 14, were allowed. In any event, notwithstanding the clearly unreasonable interpretations ascribed to the claim terms "polyamino acids" and "lipids" in the June 17, 2004 Official Action, these terms have been deleted from claim 6, 7 and 14, as the case may be, in the interest of advancing prosecution of this application. It is noted in this regard, that claims 5 and 12, respectively, are of sufficient breadth to include the subject matter deleted from claims 6, 7 and 14 by the present amendment.

The claim terms regarded as indefinite in claim 8 have been deleted, and are now set forth in new claim 27. Support for the subject matter of new claim 27 is provided in the present specification at page 8, line 24 through page 9, line 3. The cited passage clearly contemplates copolymers formed from monomers which contain carboxyl pendant groups and monomers which do not contain carboxyl pendant groups.

No new matter has been introduced into this

application by reason of the amendment presented herewith.

Entry of the present amendment is respectfully requested, inasmuch as this amendment is believed to place the application in condition for allowance.

In view of the present amendment and the foregoing remarks, the issuance of a Notice of Allowance is in order and such action is earnestly solicited.

Respectfully submitted,  
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Enclosures

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